

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-173

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Paragraphs (a), (b) and (c) of s. RL 141.01 fail to indicate that “another national organization that certifies, registers or accredits” therapists must be approved by the department. Should the rule contain criteria for departmental approval of other national organizations? See s. 440.03 (14) (a) 1. b., 2. b. and 3. b., Stats.

b. Section RL 142.04 arguably exceeds the authority granted by s. 440.03 (14) (d), Stats. The latter requires the department to promulgate rules specifying the services within the scope of practice that a registered therapist “is qualified to perform.” A strict interpretation of the statutory provision arguably would limit the rule-making authority to a delineation of services that a registered therapist is qualified to perform and a prohibition against practicing beyond the defined scope of practice. Under that interpretation, the authority for prohibited practice rules that relate more to unprofessional conduct or misconduct may be questioned. A more expansive interpretation of the statutory provision might support more of the prohibited practices delineated in the rule as essentially defining the scope of practice. The department should consider the statutory authority for s. RL 142.04, both generally and as it relates to each prohibited practice.

2. Form, Style and Placement in Administrative Code

- a. It is suggested that the rule create only one chapter with three subchapters.
- b. The style of s. RL 140.02 (2) is inconsistent with subs. (3) and (4) of that section which delineate elements of the respective practice. More importantly, however, all the

definitions contain substantive provisions that are more appropriately placed in provisions relating to scope of practice. Consideration should be given to whether it is necessary at all to define the practice of art therapy, dance therapy and music therapy; it appears, as indicated, that most of each definition can be stated within the rules relating to the scope of practice (if a definition is considered necessary, perhaps the first sentence of each definition will suffice).

c. In s. RL 141.02 (1) (intro.), it is suggested that “on or before the renewal date” be relocated to follow “submit.” Also, sub. (1) (a) refers to a form. The requirements of s. 227.14 (3), Stats., should be met.

d. In s. RL 142.01 (1) (intro.), “Practice” should be modified by “Musical therapy.”

e. In s. RL 142.02 (1) (intro.), “Practice” should be modified by “Art therapy.”

f. In s. RL 142.03 (1) (intro.), “Practice” should be modified by “Dance therapy.”

g. In s. RL 142.04 (intro.), “without limitation because of enumeration” should be deleted. Generally, it is not a favored drafting technique and its import in the context of the prohibited practices section is unclear.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Each of the sections defining the scope of practice of the respective therapies addressed by the rule refers to “generally accepted standards recognized by the profession,” followed by a noninclusive listing of standards. Consequently, generally accepted standards recognized by each profession apparently exist that are not recognized within the rule but of which a reasonable practitioner would be aware and that can be established by the department by introduction of evidence. Is that the intent of the wording of the scope of practice provisions?

b. In s. RL 140.02, why does sub. (4) refer to “termination of services,” but subs. (2) and (3) do not? [See also ss. RL 142.01, 142.02 and 142.03.]

c. In s. RL 142.01 (1) (b), it appears that a semicolon should be placed after “needed.” Is the reference to “infection control procedures” correct?

d. In s. RL 142.03 (1) (b), does “modalities” refer back to “movement” in addition to “nonverbal” and “verbal”? Consideration should be given to clarifying the sentence.

e. In s. RL 142.04 (4), consideration should be given to placing “when indicated” following “failing.”

f. Section RL 142.04 (10) makes reference to a client’s “authorized representative.” Should reference to an authorized representative be made elsewhere in the rule?

g. In s. RL 142.04 (11), “conduct” should replace “misconduct.” Consideration should be given to giving further specificity to the term “dual relationships.”

h. In s. RL 142.04 (16), “other” should be deleted.

- i. In s. RL 142.04 (20), use of “appropriate” is vague; can more guidance be provided?
- j. In s. RL 142.04 (22), should “knowingly” modify “Making”?
- k. In s. RL 142.04 (24), should “relating to the practice of music, art or dance therapy” follow “department”?